

US Serial No. 10/542315  
Page 6 of 13

Remarks:

*Amendments to the claims:*

Claims 1-17 are pending in this application. By this Amendment, claim 1 is amended.

No new matter is added to the application by this Amendment. Support for the features added to claim 1 can be found within the present specification, as originally filed, at, for example, paragraphs [0009], [0028], [0030] and [0046] of U.S. Patent Publication No. 2006/0154850 (hereinafter "the 850 publication") for the present application.

*Regarding the rejection of claims 1-3 and 7-17 under 35 USC 102(b) as allegedly being anticipated by WO 01/78657 to McManus et al. (hereinafter "McManus"):*

Applicants traverse the Examiner's rejection of claims 1-3 and 7-17 as allegedly being anticipated by McManus.

Prior to discussing the relative merits of the Examiner's rejection, the applicant points out that unpatentability based on "anticipation" type rejection under 35 USC 102(b) requires that the invention is not in fact new. See *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 USPQ2d 1101, 1103 (Fed. Cir. 1995) ("lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee").

Anticipation requires that a *single reference* [emphasis added] describe the claimed invention with sufficient precision and detail to establish that the subject matter existed in the prior art. See, *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990).

The principle of "inherency," in the law of anticipation, requires that any information missing from the reference would nonetheless be known to be present in the subject matter of the reference, when viewed by persons experienced in the field of the invention. However, "anticipation by inherent disclosure is appropriate only when the reference

US Serial No. 10/542315  
Page 7 of 13

discloses prior art that must necessarily include the unstated limitation, [or the reference] cannot inherently anticipate the claims." *Transclean Corp. v. Bridgewood Servs., Inc.*, 290 F.3d 1364, 1373 [62 USPQ2d 1865] (Fed. Cir. 2002); *Hitzeman v. Rutter*, 243 F.3d 1345, 1355 [58 USPQ2d 1161] (Fed. Cir. 2001) ("consistent with the law of anticipation, an inherent property must necessarily be present in the invention described by the count, and it must be so recognized by persons of ordinary skill in the art"); *In re Robertson*, 169 F.3d 743, 745 [49 USPQ2d 1949] (Fed. Cir. 1999) (that a feature in the prior art reference "could" operate as claimed does not establish inherency).

Thus when a claim limitation is not explicitly set forth in a reference, evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." *Continental Can Co.*, 948 F.2d at 1268. It is not sufficient if a material element or limitation is "merely probably or possibly present" in the prior art. *Trintec Indus., Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 1295 [63 USPQ2d 1597] (Fed. Cir. 2002). See also, *W.L. Gore v. Garlock, Inc.*, 721 F.2d at 1554 (Fed. Cir. 1983) (anticipation "cannot be predicated on mere conjecture respecting the characteristics of products that might result from the practice of processes disclosed in references"); *In re Oelrich*, 666 F.2d 578, 581 [212 USPQ 323] (CCPA 1982) (to anticipate, the asserted inherent function must be present in the prior art).

The Patent Office alleges that McManus discloses each and every feature recited in claims 1-3 and 7-17. Applicants respectfully disagree with these allegations.

Nowhere does McManus teach or suggest an encapsulated fragrance composition consisting essentially of a fragrance material encapsulated in a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, wherein the liquid crystal-forming material additionally contains a reinforcing material as required by amended claim 1.

US Serial No. 10/542315  
Page 8 of 13

Instead, McManus is directed to making skin-moisturizing compositions (see page 3, line 22 of McManus). These skin-moisturizing compositions comprise LCGN emulsions, which includes water, at least one cationic emulsifier, at least one low HLB emulsifier and at least one emollient (see page 4, lines 9-15 of McManus). Even though McManus may disclose liquid crystal-forming materials, McManus utilizes liquid crystal-forming materials for seeking to stabilize oil-in-water emulsions (see page 1, lines 30 and 31 of McManus).

Because the features of independent claim 1 are neither taught nor suggested by McManus, McManus cannot anticipate, and would not have rendered obvious, the features specifically defined in claim 1 and its dependent claims.

For at least these reasons, claims 1-3 and 7-17 are patentably distinct from and/or non-obvious in view of McManus. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

*Regarding the rejection of claim 4 under 35 USC 102(b) as allegedly being anticipated by McManus when taken with U.S. Patent No. 5,534,265 to Fowler et al. (hereinafter "Fowler"):*

Applicants traverse the Examiner's rejection of claim 4 as allegedly being anticipated by McManus and Fowler.

The Patent Office alleges that McManus teaches each and every feature recited in claim 1 and that McManus teaches reinforcing material (thickening agent) which is one taught by Fowler which is incorporated by reference in McManus. Moreover, the Patent Office alleges that Fowler teaches polyacrylamide co-polymers as reinforcing materials. Applicants respectfully disagree with these allegations by the Patent Office.

US Serial No. 10/542315  
Page 9 of 13

Fowler fails to remedy the above-identified deficiencies of McManus as discussed with respect to claim 1 from which claim 4 depends because Fowler does not teach or suggest an encapsulated fragrance composition consisting essentially of a fragrance material encapsulated in a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, wherein the liquid crystal-forming material additionally contains a reinforcing material. McManus is so fundamentally different from the encapsulated fragrance composition of claim 1 that addition of Fowler fails to teach or suggest the features recited in claim 1.

Additionally, the polyacrylamides of Fowler are gelling agents, that is something to make an entire composition a gel, not reinforcing agents as required by the present claims (see col. 2, lines 34 and 35 of Fowler). Moreover, Fowler provides no nexus of similarity at all with McManus, and any combination of McManus and Fowler fails to produce the presently claimed encapsulated fragrance composition.

Because the features of independent claim 1 are neither taught nor suggested by McManus and Fowler, taken singly or in combination, these references cannot anticipate, and would not have rendered obvious, the features specifically defined in claim 4 which depends from claim 1.

For at least these reasons, claim 4 is patentably distinct from and/or non-obvious in view of McManus and Fowler. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

*Regarding the rejection of claim 6 under 35 USC 102(b) as allegedly being anticipated by McManus when taken with U.S. Patent No. 4,643,898 to Peters et al. (hereinafter "Peters"):*

Applicants traverse the Examiner's rejection of claim 6 as allegedly being anticipated by McManus and Peters.

US Serial No. 10/542315  
Page 10 of 13

The Patent Office alleges that McManus teaches each and every feature recited in claim 1 and that McManus teaches the reinforcing material (thickening agent) is magnesium trisilicate, which is the product of a combination of sodium silicate and magnesium sulfate as evidenced by Peters. Applicants respectfully disagree with these allegations by the Patent Office.

Peters fails to remedy the above-identified deficiencies of McManus as discussed with respect to claim 1 from which claim 6 indirectly depends because Fowler does not teach or suggest an encapsulated fragrance composition consisting essentially of a fragrance material encapsulated in a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, wherein the liquid crystal-forming material additionally contains a reinforcing material. McManus is so fundamentally different from the encapsulated fragrance composition of claim 1 that addition of Peters fails to teach or suggest the features recited in claim 1.

Because the features of independent claim 1 are neither taught nor suggested by McManus and Peters, taken singly or in combination, these references cannot anticipate, and would not have rendered obvious, the features specifically defined in claim 6 which depends from claim 1.

For at least these reasons, claim 6 is patentably distinct from and/or non-obvious in view of McManus and Peters. Reconsideration and withdrawal of the rejection of the claims under 35 USC 102(b) are respectfully requested.

*Regarding the rejection of claim 5 under 35 USC 103(a) as allegedly being unpatentable over McManus in view of U.S. Patent No. 2,806,842 to Gerecht et al. (hereinafter "Gerecht"):*

US Serial No. 10/542315  
Page 11 of 13

Applicants traverse the Examiner's rejection of claim 5 as allegedly being unpatentable over McManus and Gerecht.

The Patent Office acknowledges that McManus does not teach or suggest a hydrophobic reinforcing material (thickening agent) chosen from block graft copolymers (see page 5 of the Office Action). The Patent Office introduces Gerecht as allegedly teaching graft copolymers with hydrophobic backbones that are soluble in non-polar solvents. Moreover, the Patent Office alleges that, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to use graft copolymers of Gerecht in the compositions of McManus because Gerecht teaches graft copolymers that would be useful as thickening agents in lotions. Applicants respectfully disagree with these allegations by the Patent Office.

Neither McManus nor Gerecht, taken singly or in combination, teaches or suggests an encapsulated fragrance composition consisting essentially of a fragrance material encapsulated in a liquid crystal-forming material containing at least one fatty alcohol having at least 22 carbon atoms, wherein the liquid crystal-forming material additionally contains a reinforcing material as required by claim 1 from which claim 5 depends.

Similarly to Fowler, Gerecht merely teaches production of gelling agents. Thus, even if Gerecht was combined with McManus as alleged by the Patent Office, the resulting combination would be so fundamentally different from the encapsulated fragrance composition of claim 1 that the resulting combination would fail to achieve the features recited in amended claim 1.

Because the features of independent claim 1 are neither taught nor suggested by McManus and Gerecht, taken singly or in combination, these references would not have rendered obvious the features specifically defined in claim 5 which depends from claim 1.

US Serial No. 10/542315  
Page 12 of 13

For at least these reasons, claim 5 is patentably distinct from and/or non-obvious in view of McManus and Gerecht. Reconsideration and withdrawal of the rejections of the claims under 35 USC 103(a) are respectfully requested.

Should the Examiner in charge of this application believe that telephonic communication with the undersigned would meaningfully advance the prosecution of this application, they are invited to call the undersigned at their earliest convenience.

The early issuance of a *Notice of Allowability* is solicited.

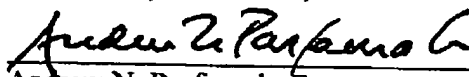
#### PETITION FOR A TWO-MONTH EXTENSION OF TIME


Applicants respectfully petition for a two-month extension of time in order to permit for the timely entry of this response. The Commissioner is hereby authorized to charge the fee to Deposit Account No. 14-1263 with respect to this petition.

#### CONDITIONAL AUTHORIZATION FOR FEES

Should any further fee be required by the Commissioner in order to permit the timely entry of this paper, the Commissioner is authorized to charge any such fee to Deposit Account No. 14-1263.

Respectfully Submitted;

  
\_\_\_\_\_  
Andrew N. Parfomak, Esq.  
Reg. No. 32,431  
Norris, McLaughlin & Marcus  
875 Third Avenue, 18<sup>th</sup> Floor  
New York, NY 10022

  
\_\_\_\_\_  
Date:

Tel: 212 808-0700

Encl: *Request for Continued Examination*